



Wetland Restoration and Your Wetland Determination

Many private landowners in Illinois are either interested or already involved in USDA wetland restoration programs, such as the Conservation Reserve Program (CRP). Under these programs, landowners “retire” and restore marginal cropland to conditions existing before the land was drained and/or cleared. These programs offer many benefits to both the landowner and the people living in the watershed. However, some people wonder how this practice affects the wetland determination of their land. The 1996 Farm Bill clearly addresses this:

“Will I have the right to reclaim the land for farming after the restoration agreement period is over?”

Yes. The land can be restored to its pre-restoration condition if that condition was documented. The landowner must request a certified wetland determination of the existing baseline conditions (extent of drainage and vegetation) before the restoration begins. In Illinois, Prior Converted Cropland (PC), Farmed Wetland (FW), and Farmed Wetland Pasture (FWP) typically qualify for USDA wetland restoration programs.

Let’s define these different types of wetlands and clarify the regulations for reclaiming the sites for farming:



Prior Converted Cropland

These are drained or otherwise manipulated areas that produced an agricultural commodity prior to December 23, 1985. These areas have also remained in agricultural use and do not meet Farmed Wetland criteria. As long as the field remains in agricultural use, even if row cropping is abandoned, the USDA recognizes the land as Prior Converted Cropland for USDA programs. Once prior conditions are documented, land keeps its PC status even if drainage is improved or interrupted or if the area reverts to a wetland for any reason. USDA does not restrict the agricultural use or improvements of a PC field providing that adjacent wetlands are not affected. Section 514.31 (a) of the National Food Security Act Manual states that an area is PC “as long as the site remains in agricultural use.” CRP or any USDA program is considered an agricultural use of the land.

Will you have the right to reclaim PC land for farming after the restoration agreement period is over?

Yes. Any part of a field determined PC and enrolled in a USDA wetland restoration program may be returned to cropland by any means after the restoration agreement or contract expires.

Keep in mind that a wetland restoration agreement simplifies the process of reclaiming the land for crop production. The U.S. Army Corps of Engineers administers Section 404 of the Clean Water Act, which regulates certain actions in wetlands. The Corps of Engineers recognizes the PC determination and does not restrict drainage in PC fields remaining in agricultural use. Under Section 404, however, a field reverting to wetland conditions without a wetland restoration agreement or plan is considered a wetland after five years without crop production. After this happens, landowners need a permit from the U.S. Army Corps of Engineers in order to convert the area for agricultural purposes.



Farmed Wetlands

These are partially drained, cropped wetlands which are cropped some years but are saturated long enough to meet wetland criteria. Farmed Wetlands may be converted back to the same level of drainage that existed on December 23, 1985, even if that drainage is interrupted by wetland restoration, lack of maintenance, or other reasons. The base line level of drainage in Farmed Wetlands must be documented before changes in drainage systems are made. The local NRCS field office can document the extent of drainage and type of vegetation as part of your wetland determination and restoration plan.

Section 514.22 (a) of the National Food Security Act Manual states that an FW area may be cropped “as long as the site remains in agricultural use, if prior to reverting to wetland, baseline conditions are documented and wetland conservation plan is prepared.” If prior conditions were not documented and cannot be determined, however, the land is considered abandoned and treated as a natural wetland if it has not been cropped or managed for pasture within five years of the contract expiration. The Farm Bill Interim Final Rule (CFR Part 12 Sec. 12.33 (c) iii) specifically addresses this issue: “participation in a USDA approved wetland restoration, set-aside, diverted acres, or similar programs shall not be deemed to constitute abandonment.”

Will you have the right to reclaim FW land for farming after the restoration agreement period is over?

Yes. If part of the restored field is a farmed wetland, the area can be returned to the documented, pre-restoration condition and used for cropland after the restoration agreement or contract expires.

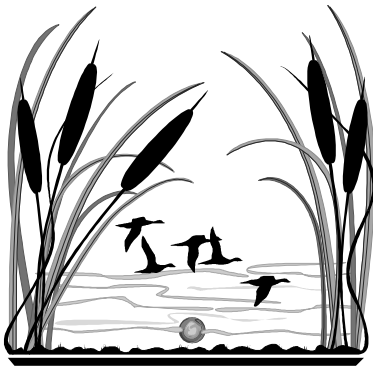


Farmed Wetland Pastures

These are areas that meet the same criteria as Farmed Wetlands except they are managed for pasture or hayland.

Will you have the right to reclaim FWP land for farming after the restoration agreement period is over?

Yes. Farmed Wetland Pastures that have been restored to wetlands under a wetland restoration agreement can return to the documented, pre-restoration condition for use as pasture, hayland or even row crops after the restoration agreement or contract expires (NFSAM Section 514.23 (a)).



Permits

Restoration of an agricultural area to a wetland may also qualify for a Nationwide Permit 27 under Section 404 of the Clean Water Act (Federal Register Vol. 65:47, March 9, 2000). A Nationwide Permit 27 applies if you agree to and follow the conditions of:

a binding wetland enhancement, restoration, or creation agreement with USFWS or NRCS

OR

a voluntary wetland restoration, enhancement, or creation plan documented by NRCS, which meets NRCS standards.

Under this Nationwide Permit, reversion of the wetland to its previous use is allowed for five years after the conclusion of the agreement period. The Nationwide Permit 27 states that any future fill or discharge associated with the reversion of the area to its documented prior condition and use must occur within five years after expiration of the restoration agreement. For more information about the use and requirements of this permit, contact your local Corps of Engineers District Office.

The Bottom Line

Wetland restoration for a USDA program requires documentation of existing conditions as well as a restoration plan. To obtain documentation, request a certified wetland determination from NRCS. NRCS can also help you develop a wetland restoration plan.

As you consider wetland restoration, remember that your land can be brought back to the pre-restoration conditions after the agreement period is over, as allowed by USDA wetland compliance regulations and Clean Water Act Section 404 under the Nationwide Permit 27 for up to five years after the restoration agreement period is over.

Contact your local NRCS County Office for more details on wetland determinations, practices, and activities.